

## REFUND OF CERTAIN DUTIES PAID BY THE STATE OF NEW YORK.

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MAY 24, 1898.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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Mr. COOPER, of Texas, from the Committee on War Claims, submitted the following

### REPORT.

[To accompany H. R. 8003.]

The Committee on War Claims, to whom was referred the bill (H. R. 8003) to refund to the State of New York certain duties paid by said State in 1863, etc., on arms imported, submit the following report:

The report made to the House of Representatives at the first session of the Forty-ninth Congress is so full and conclusive that your committee have adopted it as a fair statement of the grounds for relief. It states:

The Committee on War Claims, to whom was referred the bill (H. R. 5011) to refund duties paid by the State of New York on arms imported in 1863, having examined the same and accompanying papers, submit the following report:

This claim is for duties paid by the State of New York on arms imported in 1863 and used in arming troops that were mustered into the service of the United States.

The foreign cost of the arms has been repaid by the United States, but the cost of importation has never been refunded. The application made by the State that it might be released from paying the duties was denied, for the reason that the act to remit duties on arms imported by States, approved July 10, 1861, and the act supplementary thereto, approved July 25, 1861, had expired by limitation.

It is evident that the foreign cost of the arms having been repaid by the United States, that part of their cost that the State was compelled to pay to the United States should also be refunded.

It seems to your committee that the duties paid were quite as much a part of the cost, charges, and expenses to the State in arming the troops as the original cost of the arms.

The duties were paid in gold, and at a time when the premium on gold was very high, which, of course, increased largely the expense to the State.

Your committee therefore recommend that said State of New York be reimbursed the amount of said duties paid on arms purchased by said State in 1863, and thus used in arming troops which were mustered into the service of the Federal Government, and that said bill do pass.

The following are the laws relating to the subject:

[12 Stat. L., p. 255.]

AN ACT to refund and remit the duties on arms imported by States.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to refund and remit the duties and imposts on all arms*

imported into the United States since the first day of May last, or which may be imported before the first day of January next, by or for the account of any State: *Provided*, The Secretary of the Treasury shall be satisfied that the said arms are intended, in good faith, for the use of the troops of any State which is, or may be, engaged in aiding to suppress the insurrection now existing against the United States.

Approved, July 10, 1861.

[12 Stat. L., p. 274.]

AN ACT to refund duties on arms imported by States.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Treasury be, and is hereby, authorized to refund, out of any money in the Treasury not otherwise appropriated, the duties paid on arms imported by States, under the conditions and subject to the limitation of the act approved the tenth day of July, eighteen hundred and sixty-one, entitled "An act to refund and remit the duties on arms imported by States."

Approved, July 25, 1861.

[12 Stat. L., p. 375.]

AN ACT in addition to an act to refund and remit the duties on arms imported by States, approved July ten, eighteen hundred and sixty-one.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the authority given to the Secretary of the Treasury to refund and remit the duties and imposts on all arms imported into the United States by or for the account of any State, as provided in the act to which this is an addition, shall extend to arms for which orders or contracts were made prior to the first day of January, eighteen hundred and sixty-two: *Provided*, That said Secretary shall have satisfactory proofs exhibited to him that the said arms were actually purchased in a foreign country for account of a State, and that the price paid for the same by the State was only the first cost, and the usual and customary charges attending the purchase and importation of the same, exclusive of duty.

Approved, April 2, 1862.

Your committee recommend the passage of the bill, and attach to their report information relating to the claim and ask that it be printed as an appendix to this report.

## APPENDIX.

In support of the passage of that bill or of some proper bill for the payment asked for, I respectfully submit the following history and facts for the consideration of Congress.

The record is an interesting one and illustrative of the too frequent delays of our Government in paying a just claim incurred by our State of New York at a grave crisis and time in our national life.

Under the calls of President Lincoln for troops during the civil war, and the proclamations and orders of the governor of the State of New York, and the urgent telegrams of Secretaries Seward and Stanton, and of the acts of Congress providing for repayment to the States by the National Government for troops and arms furnished by the States and used in the service of the United States, the State of New York, in July and August, 1863, bought and paid for arms in foreign countries, and upon their importation into the United States, at the port of New York, in those months, the customs authorities at that port exacted from the State of New York duties upon such arms so imported, which the State paid under protest. Those arms were used in arming New York regiments, and which regiments and arms were used in the service of the United States during the civil war.

The following are copies of such importations and of the invoices thereof, of whom bought, date of entry, cost of arms, and amounts of duties so paid.

*The State of New York to Naylor & Co., Dr*

1863.		
July 3.	For 1,000 Enfield rifles, at \$15.....	\$15,000.00
	50 cases, at \$2.....	100.00
	Duty paid on the above under protest, \$15,075 at 35 per cent,	
	\$5,276.25; premium on gold, 43½ per cent, \$2,314.96.....	7,591.21
		<hr/>
		22,691.21

The ordnance stores above described have been received at the State arsenal, in the city of New York, and they have been inspected and accepted.

JAMES A. FARRELL,  
Commissary-General of Ordnance, State of New York.

I certify that the above account is correct and just, and that the expenditure was necessary for the public service.

We certify that the above account of \$22,691.21 for arms purchased for the State, pursuant to chapter 222 of the laws of 1863, is proper to be paid from the appropriation made by said chapter.

Albany, ———, 186—.

HORATIO SEYMOUR, Governor.  
D. R. FLOYD JONES, Lieutenant-Governor.  
L. ROBINSON, Comptroller.

Received of W. B. Lewis, treasurer of the State of New York, \$22,691.21, in full of the above account.

NAYLOR & Co.

*The State of New York to Merwin & Bray, Dr.*

1863.

July 9.	For 1,180 Enfield rifles (in bond), at \$16.50, \$19,470; 59 cases, at \$2.50, \$147.50.....	\$19,617.50
	Duty per steamer <i>City of New York</i> , value \$8,542.84; duty per steamer <i>City of Cork</i> , value \$2,490.30; duty per steamer <i>City of Baltimore</i> , value \$2,244.80; total, \$13,277.94, at 35 per cent, is \$4,647.35; premium on gold, 44½ per cent, is \$2,068.08.....	6,715.43
23.	1,200 Enfield rifles (in bond), at \$16.50, \$19,800; 60 cases, at \$2.50, \$150.....	19,950.00
	Duty per steamer <i>China</i> , value \$45; duty per steamer <i>Glasgow</i> , value \$287; duty per steamer <i>City of Baltimore</i> , value \$271; duty per steamer <i>Etna</i> , value \$50; total, \$653; duty 35 per cent, \$228.55; premium on gold, 25 per cent, is \$57.14; duty per steamer <i>Great Eastern</i> on 960 rods, \$31.25; duty per steamer <i>Glasgow</i> , value \$484; duty per steamer <i>City of Baltimore</i> , value \$603; duty per steamer <i>City of Baltimore</i> , value \$436; total, \$1,523, at 35 per cent, is \$533.05; duty per steamer <i>City of New York</i> , value \$75; duty per steamer <i>City of New York</i> , \$220; duty per steamer <i>Baravia</i> , value \$2,500; duty per steamer <i>Arago</i> , value \$977; duty per steamer <i>City of Baltimore</i> , value \$436; total, \$4,235, at 30 per cent, is \$1,270.50.....	2,120.49
Aug. 3.	1,620 Enfield rifles (in bond), at \$16.50, \$26,730; 81 cases, at \$2.50, \$202.50.....	26,932.50
	Duty per steamer <i>City of London</i> , value \$3,612; duty per steamer <i>Edinburgh</i> , value \$2,515; total, \$6,127, at 35 per cent, is \$2,144.45; premium on gold, 28 per cent, is \$600.44; duty per steamer <i>City of Limerick</i> , value \$7,620; duty 35 per cent, is \$2,636.43; premium on gold, 27 per cent, is \$719.98; duty per steamer <i>City of Manchester</i> , value \$3,163; duty per steamer <i>Glasgow</i> , value \$435; total, \$3,598; duty 35 per cent, is \$1,259.30; premium on gold, 27 per cent, is \$341.01.....	1,599.31
		83,066.53

We certify that the above account of ——— dollars and ——— cents, for arms purchased for the State pursuant to chapter 222 of the laws of 1863, is proper to be paid from the appropriation made by said chapter.

Albany, ———, 186—.

HORATIO SEYMOUR, Governor.  
D. R. FLOYD JONES, Lieutenant-Governor.  
L. ROBINSON, Comptroller.

Received of ———, treasurer of the State of New York, \$83,066.53, in full of the above account.

MERWIN & BRAY.  
ROBERT O. EDWARDS.

The ordnance stores described herein have been received at the State arsenal, in the city of New York, and they have been inspected and accepted.

JAMES A. FARRELL,  
Commissary-General of Ordnance, State of New York.

#### 4 REFUND OF CERTAIN DUTIES PAID BY STATE OF NEW YORK.

The original of this invoice placed in the hands of the adjutant-general June 7, 1877, for transmission to Washington.

*The State of New York to Frank Otard, Dr.*

1863.

July 2. For 111 cases containing each 24 No. 1 ordinary Enfield rifles, St. Etienne make, with tompons and snapcaps, equal to 2,664 rifles, at \$17 each, in bond.....	\$45,288.00
111 cases, at \$2.....	222.00
	<hr/> 45,510.00
	In gold.
Duties on invoice value \$36,765, at 35 per cent.....	\$12,867.75
One-eighth per cent commission.....	16.08
	<hr/> 12,883.83
Equal in currency to 144§.....	18,601.03
Stamps, entries, and fees.....	38.10
	<hr/> 18,639.13
	<hr/> 64,149.13

The ordnance stores above described have been received at the State arsenal, in the city of New York, and they have been inspected and accepted.

JAMES A. FARRELL,

*Commissary-General of Ordnance, State of New York.*

We certify that the above account of \$64,149.13, for arms purchased for the State pursuant to chapter 222 of the laws of 1863, is proper to be paid from the appropriation made by said chapter.

Albany, September 5, 1863.

HORATIO SEYMOUR, *Governor.*

D. R. FLOYD JONES, *Lieutenant-Governor.*

L. ROBINSON, *Comptroller.*

Received September 5, 1863, of Wm. B. Lewis, treasurer of the State of New York, \$64,149.13, in full of the above account.

FRANK OTARD,

*pp. ARTHUR WIGERT, Attorney.*

The original of this invoice placed in the hands of the adjutant-general June 7, 1877, for transmission to Washington.

The United States paid the foreign cost of such arms, but declined to remit or refund the customs duties so exacted, for the following reason:

The act of Congress entitled "An act to remit duties on arms imported by States," approved July 10, 1861 (12 Stat., 255), and the act supplementary thereto, approved July 25, 1861 (id., 274), expired by limitation January 1, 1862. While those acts were in existence, duties so paid by States were remitted upon the importation of arms, or if exacted were repaid to the States by the National Government, but not after January, 1862, unless the orders or contracts for such arms were made prior to January 1, 1862 (12 Stat., p. 375), by an act approved April 2, 1862, which was not the fact in this case.

When the arms in this case were ready for importation and entry at the port of New York, and in June, 1863, the State of New York, through its proper officer, made application to the then Secretary of the Treasury, Salmon P. Chase, that the State be relieved from the payment of duties thereon. The Secretary declined, upon the sole and express ground that the law authorizing remission had expired. The following is a copy of his letter:

TREASURY DEPARTMENT, *June 24, 1863.*

SIR: I have received your letter of the 22d instant, stating that you can purchase for the use of the State of New York 10,000 Enfield rifles now in bond, and asking if the State can be relieved from paying the duties thereon.

I regret to say that the law authorizing the remission of duty in such cases has expired.

I am, very respectfully,

S. P. CHASE,

*Secretary of the Treasury.*

JOHN T. SPRAGUE, Esq.,  
*New York City.*

While the justness of this claim does not seem to have ever been questioned, the accounting officers of the Treasury Department, who, under chapter 21 of the act of Congress of July 27, 1861 (12 Stat., 276), and the joint resolution of Congress of March 8, 1862 (12 Stat., 615), were authorized to settle and pay to the States the costs and charges and expenses properly incurred by States for enrolling, subsisting, clothing, supplying, arming, equipping, paying, and transporting troops employed in aiding to suppress the then insurrection against the United States, have never felt that they were authorized, under those acts, to settle and pay this claim, especially as they contend that the rules and regulations issued by the Secretary of the Treasury to carry out the provisions of those acts did not extend to a remission of customs duties, and that Congress was, and is, the only body having power to provide for its settlement and payment.

The following statement will show that our State has been reasonably diligent in pressing for the refund of these duties:

First. The letter of the adjutant-general of the State of New York to Secretary Chase, and his answer thereto, in June, 1863.

Second. In December, 1863, Gen. James A. Farrell, commissary-general of the State of New York, transmitted to Edwin D. Morgan, then a Senator from New York, and to Homer A. Nelson, then a Representative from New York, papers in full, relating to such duties, and Senator Morgan introduced in the Senate, and Mr. Nelson in the House, a memorial or petition on behalf of the State for the remission of such duties, which was referred to the Committee on Ways and Means, but it does not appear that any final action was taken thereon.

The following is a portion of General Farrell's report relative to this matter:

[Extract from report of Brig. Gen. James A. Farrell, commissary-general of ordnance of the State of New York, dated December 25, 1863.]

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The Enfields so contracted for were in bond, and a provision was accordingly inserted in the contract by which the contracting parties agreed to advance in behalf of the State the duties due thereon, in the event of the Government declining to remit the same, the moneys so advanced to be reimbursed to the parties by the State; and that after the execution of the said contract, and prior to the commencement of the performance thereof, the same were forwarded to the adjutant-general and returned to me with his approval endorsed thereon; that thereupon the Enfield rifles were released from bond, and the duties thereon, amounting to forty-nine thousand four hundred and fifty-seven dollars and fifty-seven cents, in currency, taking into consideration the premium existing on gold paid by the contracting parties under a written protest filed with the Hon. Hiram Barney, collector of the port of New York, executed by the undersigned in behalf of the State.

The contracting parties have been reimbursed by the State in the said sum of forty-nine thousand four hundred and fifty-seven dollars and fifty-seven cents, and accurate and verified statements of the duties paid and of all matters connected therewith have been prepared by me with great care and labor, and forwarded to Hon. Edwin D. Morgan, United States Senator, and Representatives H. A. Nelson and Henry G. Stebbins with a view of having Congressional action taken, indemnifying the State for the amount so expended; and I am positively assured by the gentlemen referred to that they will exert their best efforts to secure the accomplishment of the object desired; and they express their entire confidence that their efforts in this behalf will result in the State's complete indemnification.

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JAMES A. FARRELL,  
*Commissary-General of Ordnance, State of New York.*

Third. I do not find any record of further action in this matter until December, 1881, when the adjutant-general of the State of New York addressed a communication in writing to the Secretary of the Treasury, asking his attention and action in the matter and asking him to recommend an appropriation by Congress for the reimbursement of these duties. In January, 1882, the Secretary transmitted this letter and eight accompanying papers to the Speaker of the House of Representatives for such disposition as it might see fit to make of the claim.

Fourth. The claim was pending in the House of Representatives in February, 1884, before the Committee on Ways and Means, of which Mr. Hewitt, of New York, was chairman, and in response to a letter from him, as such chairman, to the Secretary of the Treasury, the Secretary wrote Mr. Hewitt a letter, of which the following is a copy:

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,  
*Washington, D. C., February 7, 1884.*

SIR: I am in receipt of your letter of the 4th instant, in regard to a claim pending



before your committee for the refunding of duties paid on arms purchased by the State of New York in 1863 and used in arming the State troops, which are stated to have been mustered into the service of the Federal Government, the State of New York being represented in the matter by J. B. Stonehouse, assistant adjutant-general of the State.

A letter was addressed by this Department to the Speaker of the House of Representatives on January 12, 1882, transmitting papers connected with the matter.

In addition to what was stated in that letter and its inclosures, I may add that on July 27, 1861, Congress passed an act directing the Secretary of the Treasury to pay, out of any moneys in the Treasury not otherwise appropriated, to the governor of any State, or its duly authorized agent, the costs, charges, and expenses properly incurred by such State for enrolling, subsisting, clothing, supplying, arming, equipping, paying, and transporting these troops, etc.

The arms referred to in this claim were imported for the use of the State of New York in equipping Federal troops, on which the State was compelled to pay the duties.

I understand that so far as the cost price of the arms is concerned the State has been in part, at least, reimbursed under authority of the act referred to, but that the duties have not been refunded.

It seems to me that the duties paid were quite as much a part of the cost, charges, and expenses to the State in arming the troops as the original cost of the arms and freight paid thereon.

These arms were purchased and the duties paid at a time when the premium on gold was very high, which of course increased largely the expense to the State.

Whether any claim for the enhanced expenses on this account should be allowed is for the committee to consider.

I therefore recommend an allowance of the claim in such an amount as may be proven to the satisfaction of the committee to be proper.

I may add that the arms in question were not, as I understand, imported within the time specified in the acts approved July 10, 1861, and July 25, 1861 (12 Stats., pp. 255, 274), and so authority for refund of the duties in question was not accorded by the act last mentioned.

Very respectfully,

CHAS. J. FOLGER, *Secretary.*

HON. ABRAM S. HEWITT,

*Committee on Ways and Means, House of Representatives.*

Fifth. In April, 1886, a bill was pending in the Senate (Senate bill 1277) to repay these duties, and the Secretary of the Treasury, in answer to a letter from the chairman of the Committee on Finance, Hon. J. S. Morrill, wrote Mr. Morrill as follows:

TREASURY DEPARTMENT, *April 21, 1886.*

SIR: I am in receipt of your letter of the 18th instant, transmitting a copy of a bill (S. 1277) to refund duties paid by the State of New York on arms imported in 1863, and requesting to be informed of the facts in the case and of my views as to the propriety or justice of granting the relief.

The bill proposes to refund, out of any money in the Treasury not otherwise appropriated, the duties paid by the State of New York on arms imported in 1863, amounting to the sum of \$42,796.87, which sum includes the premium paid in the purchase of gold for the payment of said duties, provided that the Secretary of the Treasury shall be satisfied that the said arms were purchased in good faith for the use of the troops of the State of New York organized to aid in suppressing the then-existing insurrection against the United States.

This matter has been heretofore considered by the Department, and on the 7th of February, 1884, a communication was addressed to Hon. A. S. Hewitt, of the Committee on Ways and Means, House of Representatives, in relation thereto.

A copy of said communication is herewith inclosed, from which it will be seen that a letter on the same subject had been previously addressed to the Speaker of the House of Representatives, on January 12, 1882, and also that Secretary Folger was of the opinion that under and in pursuance of the principles enunciated in the act of July 27, 1861, the State of New York was entitled to a refund of the duties paid on such arms as were imported for use in arming volunteers from that State, as well as for the purchase price of such arms abroad, the act directing the Secretary of the Treasury to pay, out of any moneys in the Treasury not otherwise appropriated, to the governor of any State, or its duly authorized agent, the costs, charges, and expenses properly incurred by such State for enrolling, subsisting, clothing, supplying, arming, equipping, paying, and transporting troops, etc.

I have nothing to add to what was stated by Secretary Folger in such communica-

tion, further than to say that I can see no good reason to dissent from the recommendation made by him.

Respectfully, yours,

C. S. FAIRCHILD, *Acting Secretary.*

Hon. J. S. MORRILL,

*Chairman Committee on Finance, United States Senate.*

And on July 8, 1886, the Secretary wrote a substantially similar letter to Hon. John Sherman, then chairman pro tem. of the Senate Finance Committee.

Sixth. In March, 1886, a bill was pending in the House of Representatives, before the Committee on War Claims, to refund these duties, and that committee made a report to the House in favor of paying the same. The following is a copy of the report and bill.

[House Report No. 1297, Forty-ninth Congress, first session.]

The Committee on War Claims, to whom was referred the bill (H. R. 5011) to refund duties paid by the State of New York on arms imported in 1863, having examined the same and accompanying papers, submit the following report:

This claim is for duties paid by the State of New York on arms imported in 1863 and used in arming troops that were mustered into the service of the United States.

The foreign cost of the arms has been repaid by the United States, but the cost of importation has never been refunded. The application made by the State, that it might be released from paying the duties, was denied, for the reason that the act to remit duties on arms imported by States, approved July 10, 1861, and the act supplementary thereto, approved July 25, 1861, had expired by limitation.

It is evident that the foreign cost of the arms having been repaid by the United States, that part of their cost that the State was compelled to pay to the United States should also be refunded.

It seems to your committee that the duties paid were quite as much a part of the cost, charge, and expenses to the State in arming the troops as the original cost of the arms.

The duties were paid in gold, and at a time when the premium on gold was very high, which, of course, increased largely the expense to the State.

Your committee therefore recommend that said State of New York be reimbursed the amount of said duties paid on arms purchased by said State in 1863, and thus used in arming troops which were mustered into the service of the Federal Government, and that said bill do pass.

A BILL to refund duties paid by the State of New York on arms imported in eighteen hundred and sixty-three.

Whereas an act entitled "An act to remit duties on arms imported by States," approved July tenth, eighteen hundred and sixty-one, and the act supplementary thereto, approved July twenty-fifth, eighteen hundred and sixty-one, have expired by limitation: Therefore,

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and is hereby, authorized and directed to refund, out of any money in the Treasury not otherwise appropriated, the duties paid by the State of New York on arms imported in eighteen hundred and sixty-three, amounting to the sum of forty-two thousand seven hundred and ninety-six dollars and eighty-seven cents, which sum includes the premium paid in the purchase of gold for the payment of said duties: *Provided,* That the Secretary of the Treasury shall be satisfied that the said arms were purchased in good faith for the use of the troops of the State of New York organized to aid in suppressing the then existing insurrection against the United States.

A similar bill was introduced in the Senate and referred to the Committee on Finance:

Seventh. A similar bill was introduced in the House of Representatives, referred to the Committee on War Claims and reported favorably in January, 1888. (H. R. 1692, Report No. 43.) And again introduced and reported favorably in the House in December, 1889. (Report No. 103, H. R. 597.) And again, and the same action in February, 1890. And again a similar bill was introduced in the Senate in September, 1893. (S. 413.) And the House (H. R. 165) reported in favor of it. (Report No. 1770, in 1895.)

This is substantially the history of this claim. From the foregoing facts there can be no doubt but that the arms in question were bought abroad and imported into the United States, at the port of New York, and were used by the State of New York in arming its troops, and used in the defense of the United States during the

late insurrection; that the State paid the duties thereon, constituting this claim, under protest; that such duties were a part of the cost of such arms, just as much as the original price of the arms or of the cost of their transportation from the place of purchase to the place of entry, and that the United States has not repaid such duties, which went into its own Treasury, because the law authorizing such payment expired by limitation January, 1862, about six months prior to their entry at New York, and that the rules of the Treasury Department providing for payment to the States for enrolling and arming State troops mustered into the service of the United States under acts of Congress of July 27, 1861, and March 8, 1862 (12 Stat.), do not provide for a refund of customs duties; that two successive Secretaries of the Treasury have, in express terms, recommended Congress to provide for such repayment; that different committees of the House of Representatives have recommended their payment, and no official or body having jurisdiction of them has reported adversely upon them.

Therefore, in behalf of the State of New York, I respectfully ask for the passage of bill by Congress to repay the same.

RICHARD CROWLEY,  
*State Agent for War Claims of New York.*

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